UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

HALLOWELL & JAMES FUNERAL HOME[1]

Employer

and

THOMAS LEMKE

Petitioner

and

AUTO LIVERY CHAUFFEURS, EMBALMERS, FUNERAL DIRECTORS, APPRENTICES, AMBULANCE DRIVERS AND HELPERS, TAXICAB DRIVERS, MISCELLANEOUS GARAGE EMPLOYEES, CAR WASHERS, GREASERS, POLISHERS AND WASH RACK ATTENDANTS UNION LOCAL NO. 727, AN AFFILIATE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Intervenor

Case 13-RD-2358

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

3. The labor organization(*s*) involved claim(*s*) to represent certain employees of the Employer.[4]

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Section 2(*6*) and (*7*) of the Act.[5]

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(*b*) of the Act:[6]

All auto livery chauffeurs employed by the Employer at its facility currently located in the Countryside, Illinois facility; but excluding all office clerical employees, guards, and supervisors as defined in the Act, and all other employees.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(*s*) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they

were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **AUTO LIVERY CHAUFFEURS, EMBALMERS, FUNERAL DIRECTORS, APPRENTICES, AMBULANCE DRIVERS AND HELPERS, TAXICAB DRIVERS, MISCELLANEOUS GARAGE EMPLOYEES, CAR WASHERS, GREASERS, POLISHERS AND WASH RACK ATTENDANTS UNION LOCAL NO. 727, AN AFFILIATE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994).** Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **May 7, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by **May 14, 2001**.

DATED April 30, 2001 at Chicago, Illinois.

/s/ Harvey A. Roth
Acting Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.

2/ The arguments advanced by the parties at the hearing have been carefully considered.

3/ The Employer is a corporation engaged in providing funeral services.

4/ The Intervenor is the incumbent representative of the employees in the unit covered by the instant petition and it intervened in this proceeding based on its collective bargaining agreement with the Employer.

5/ For at least ten years, the Intervenor has represented a bargaining unit at the Employer's Countryside Illinois facility. The Employer and the Intervenor are currently operating under the terms of an multi-employer association agreement between the Funeral Directors Services Association of Greater Chicago and the Auto Livery Chauffeurs, Embalmers, Funeral Directors, Apprentices, Ambulance Drivers and Helpers, Taxicab Drivers, Miscellaneous Garage Employees, Car Washers, Greasers, Polishers and Wash rack attendants Union Local No. 727, an affiliate of the International Brotherhood of Teamsters. The agreement is titled *Articles of Agreement covering Auto Livery Chaufeurs* with a five-year term effective between March 1, 1998 and February 28, 2003. At the hearing, the Intervenor took no position regarding whether the current collective bargaining agreement served as a bar to the processing of the instant petition.

It is long settled law that a collective bargaining agreement of more than three years duration operates to serve as bar to representation petitions filed by persons not parties to the bargaining agreement only for the first three years of the from the effective date of the agreement. *Dobbs International Services, Inc.,* 323 NLRB 1159 (1997); *General Cable Corp.,* 139 NLRB 1123, 1125 (1962). As the instant petition was filed after the third year of the current collective bargaining agreements by an individual employee, the application of Board precedent makes it clear that the current bargaining agreement does not serve as a bar to the processing of the instant petition.

6/ The Unit found appropriate herein is in keeping with the stipulation of the parties and is in accord with the description of the appropriate unit in the collective bargaining agreement between the Employer and the Intervenor as to unit composition.

FACTS:

All parties to this proceeding stipulated to the composition of the bargaining unit, agreeing that, with regard to the Employer's operation, the classification encompassed by the stipulation is coextensive with that of the unit in the collective bargaining agreement.

The parties stipulation as to the description of the classification included in the unit did not encompass the appropriate scope of the unit - whether the unit was a single employer unit or a multi-employer unit based upon the current collective bargaining agreement. At the hearing the Employer took the position that the appropriate scope of

the unit was a single employer unit. The other parties to the proceeding did not take a postion on this matter.

It is undisputed that during the third year of the above-mentioned association-wide collective bargaining agreement, the Employer, in a letter dated February 29, 2000, withdrew from its membership in the multi-employer association and revoked the association's right to represent the Employer in any matters pertaining to the Intervenor. Thereafter, the Employer has not paid dues to or participated in the association[i]. The instant petition was filed on March 8, 2001 at the beginning of the fourth year of the association's five-year agreement with the Union. The Employer takes the position that, in the face of its timely withdrawal from the association, the scope of the bargaining unit is properly a single employer unit. The Union took no position on the matter.

Analysis and Conclusion

Bargaining on a multi-employer basis is a purely consensual matter. As such, employers may withdraw from bargaining on a multi-employer basis. The specific ground rules governing withdrawal from multi-employer bargaining units are set out in *Retail Associates*, 120 NLRB 388, 395 (1958), and particularly focus on a timely withdrawal from a the multi-employer unit. Neither an employer nor a union may effectively withdraw from a duly established multi-employer bargaining unit except upon adequate written notice given prior to the date set by the contract for modification, or the agreed-upon date to begin the multi-employer negotiations. *Id*. It is undisputed on the record herein that the Employer gave timely written notice of its withdrawal from the multi-employer bargaining unit to both the association and the Intervenor.

The Board generally requires that the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit. Group Health Association, Inc., 317 NLRB 238 (1995); Mo's West, 283 NLRB 130 (1989); Delta Mills, Inc., 287 NLRB 367, 368 (1987); Bell & Howell Airline Service Co., 185 NLRB 67 (1970); Great Falls Employers Council, Inc., 114 NLRB 370 (1955). In the circumstances of a multi-employer bargaining unit:

> [A]n exception is made for an employer who has timely withdrawn from the multi-employer association. Thus a petition covering a unit of a single employer's employees will not be dismissed on the grounds that it is not coextensive with the multi-employer unit if the petition is filed as here, after the employer's timely withdrawal [citations omitted.]

Arrow Uniform Rental, 300 NLRB 246, 247 (1990). In *Union Fish Co.*, 156 NLRB 192-193 (1965), the Board directed an election in a single employer unit after the employer had timely withdrawn from a multi employer bargaining association. In *Bell Bakeries of St. Petersburg, et al*, 139 NLRB 1344 (1960), the Board found a single employer unit was appropriate following the employer's withdrawal from the multi-employer bargaining unit notwithstanding that the multi-employer bargaining agreement was effective by its terms for another year. In view of the Employer's timely withdrawal

[i] The Employer at the hearing did not concede that it was part of a mult-employer bargaining unit.

from the multiemployer bargaining association, I find the scope of the appropriate unit to be limited to the Employer's Countryside Illinois facility.

There are approximately three auto livery chauffeurs in the unit found appropriate herein.

347-4010-2000; 420-9016; 440-5033-6080